

NOT FOR PUBLICATION -- UPLOAD TO WWW.VID.USCOURTS.GOV

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

VIRGIN ISLANDS BUREAU OF INTERNAL	)	
REVENUE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
THE CHASE MANHATTAN BANK,	)	Civ. No. 1993-093
	)	
Defendant and Third	)	
Party Plaintiff,	)	
	)	
WILLIAM LANSDALE	)	
	)	
Third Party	)	
Defendant.	)	

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**ATTORNEYS:**

**Richard M. Prendergast, Esq.**

Asst. Attorney General

St. Croix, U.S.V.I.

*For the plaintiff*

**Elizabeth A. Clark, Esq.,**

St. Thomas, U.S.V.I.

**Lawrence M. Hill, Esq.,**

White & Case LLP, New York

*For the defendant/third party plaintiff*

**Henry C. Smock, Esq.,**

St. Thomas, U.S.V.I.

*For the third party defendant*

**MEMORANDUM**

MOORE, J.

This matter is before the Court on the Virgin Islands Bureau of Internal Revenue's [the "VIBIR"] motion for leave to file a

second amended complaint. For the reasons set forth below, the Court will deny the motion.

## **I. PROCEDURAL BACKGROUND**

This case involves two notices of levy served on Chase by the VIBIR, the first on April 22, 1991, ["1991 levy"], and the second on May 20, 1992, ["1992 levy"]. Both levies arise out of unpaid tax liabilities of certain taxpayer corporations [collectively the "Lansdale corporations"] owned by William and Marianthi Lansdale [collectively the "Lansdales"] who at various times maintained accounts with Chase.

The VIBIR is the agency of the Government of the Virgin Islands ["government"] charged with administering and enforcing income tax laws in the U.S. Virgin Islands. Chase is a national bank doing business in the U.S. Virgin Islands. On June 16, 1993, the VIBIR filed its complaint against Chase, alleging that Chase failed to honor the 1992 levy by not turning over certificates of deposit ["CDs"] belonging to the Lansdale corporations. The government seeks the value of the taxpayer's property held by Chase at the time of the 1992 levy, plus interest, plus a fifty percent penalty for failure to remit without good cause. On June 30, 1994, the parties stipulated to dismissal with prejudice of the fifty percent penalty in exchange for Chase filing a third-party complaint against Lansdale.

On May 16, 1997, the VIBIR moved to amend its complaint to add a count for failure to comply with the 1991 levy. The Court granted the motion by order dated May 19, 1993. The amended complaint also sought a fifty percent penalty for failure to comply with the 1991 Levy. Chase responded by filing a motion for leave to file an amended answer, which included a counterclaim for breach of good faith and fair dealing related to the stipulation of dismissal. The VIBIR and Chase filed cross-motions for summary judgment in 1999, and this Court heard argument on the motions in early 2000. At the hearing, the VIBIR raised the issue of Lansdale's fraudulent conveyance as a basis of Chase's liability. Shortly thereafter, on May 31, 2000, the VIBIR filed a motion for leave to file a second amended complaint, seeking to add a count based on fraudulent conveyance. Chase and Lansdale opposed the motion.

## **II. DISCUSSION**

Once an amended complaint has been filed, a plaintiff may amend the complaint again only by leave of the court. See Fed. R. Civ. P. 15(a). Although this leave "shall be freely given when justice so requires," the decision to grant leave is left solely to the discretion of the trial court. See *Foman v. Davis*, 371 U.S. 178, 182 (1962). A district court may deny leave to

amend on grounds such as undue delay, bad faith or dilatory motive, undue prejudice to the opposition, repeated failures to correct deficiencies with previous amendments, and futility of the amendment. See *Anderson v. Government of the Virgin Islands*, 39 V.I. 235, 240 (D.V.I. 1998) (citing *Riley v. Taylor*, 62 F.3d 86, 90 (3d Cir. 1995)). The Court will exercise its discretion and deny the motion to amend, because it was filed after undue delay.

The VIBIR filed its motion for leave to file its second amended complaint seven years after the first complaint was filed, and nearly two years after the complaint was first amended. The VIBIR claims that it only recently learned of facts necessary to support the addition of a fraudulent conveyance count, but it does not specify what those facts are. Moreover, it should have been clear to the VIBIR when it filed its first amended complaint that there existed a potential fraudulent conveyance claim. In fact as early as 1994, in a related matter, Richard R. Knoepfel, the receiver for the Lansdale corporations, working closely with the VIBIR, charged that Lansdale received bank loans, including the one from Chase for \$600,000, which were secured by CDs belonging to the Lansdale corporations, and which were provided without fair consideration therefor. See *Knoepfel v. Lansdale*, Civ. No. 1994-156, Complaint at ¶¶ 23-28. The

VIBIR's extreme delay in seeking to add a count of fraudulent conveyance is inexplicable and certainly "undue."

The Court's discretion is ultimately "tempered by considerations of prejudice to the non-moving part." See *Anderson* at 239 (internal quotes and citation omitted). If the Court were to grant the VIBIR leave to amend a second time after both sides have conducted discovery, filed extensive cross-motions for summary judgment, and argued these motions in court, defendants will be forced to file yet another round of answers, commence new avenues of discovery, and file new motions to dismiss and/or for summary judgment eight years into the litigation. The Court, therefore, will deny the motion to amend.

### III. CONCLUSION

The Court will deny the VIBIR's motion to file a second amended complaint based on the undue delay in seeking the amendment and the prejudice that would result therefrom.

**ENTERED this 31st day of January, 2001.**

**For the Court**

\_\_\_\_\_/s/\_\_\_\_

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**Thomas K. Moore**  
**District Judge**

**ATTEST:**  
**WILFREDO MORALES**  
**Clerk of the Court**

By:           /s/            
Deputy Clerk

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White & Case LLP, New York

*For the defendant/third party plaintiff*

**Henry C. Smock, Esq.,**

St. Thomas, U.S.V.I.

*For the third party defendant*

**ORDER**

MOORE, J.

For the reasons set forth in the foregoing Memorandum of  
even date, it is hereby

**ORDERED** that the VIBIR's motion for leave to file a second amended complaint is **DENIED**.

**ENTERED** this 31st day of January, 2001.

**For the Court**

\_\_\_\_\_/s/\_\_\_\_\_  
**Thomas K. Moore**  
**District Judge**

**ATTEST:**  
**WILFREDO MORALES**  
**Clerk of the Court**

**By:**\_\_\_\_\_/s/\_\_\_\_\_  
**Deputy Clerk**

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